Arab Malaysian Bank Bhd v Strategi Cerah Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D8–22–3310 OF 1999
ABDUL WAHAB AHMAD J
22 MAY 2006

Contract — Frustration — Performance of agreement rendered impossible due to supervening act — Condominium units were sold to third party — Whether the plaintiff is capable of fulfilling its obligations of delivering back the said units — Whether amounts to frustration — Contracts Act 1950 s 57(2)

The plaintiff granted to the first defendant a term loan of RM480,000 for the purchase of two condominium units and they also entered into a loan agreement cum assignment dated 11 March 1997. A power of attorney was executed to enable the plaintiff to subsequently release the units to the first defendant. Following the agreement, the second and third defendants executed a letter of guarantee. The plaintiff claimed that the defendants had failed to fulfill their obligations under the agreement and guarantee and claimed the amount of RM340,516.51. The defendants alleged that there was a total failure of consideration. The subject matter of the agreement, ie condominium unit No 1-5A was sold to a third party. The defendants claim that the sale of the unit to the third party had released them from any obligation whatsoever under the agreement. The defendant counterclaimed. The plaintiff's learned counsel informed the court that it had filed an originating summons No S3–24–3280 of 2002 for a declaration that the plaintiff is the rightful assignee of the unit that had been sold to the third party by the developer, however the originating summons was dismissed with costs. The questions for determination posed by parties to the court are the following: (i) whether the assignment agreement and term loan dated 11 March 1997 was frustrated; (ii) whether there is total failure of consideration where the loan is concerned; (iii) whether the plaintiff is capable of fulfilling its obligations of delivering back the said units to the first defendant under the agreement if the first defendant fulfilled its obligations under cl 50 of the agreement.

Held:

(1) It is clear that the assignment agreement and term loan dated 11 March 1997 were frustrated. Clause 50 of the agreement provides that the defendants shall be entitled to obtain a discharge and release of the said property upon full repayment of the loan to the plaintiff. This shows that what is required of the plaintiff after the loan is repaid in full is to release and discharge the property to the defendants. This is the plaintiffs obligation. It is obvious that at the end of the day, the plaintiff would not be able to fulfill that obligation under cl 50 of the agreement. The effect of all this is that the whole contract is frustrated

as a fundamental term of the contract for the plaintiff to reassign the condominium has become impossible even if the full sum due is paid. Therefore the loan agreement cum assignment and the term loan agreement dated 11 March 1997 are frustrated and becomes void under s 57(2) of the Contracts Act 1950 (see paras 19–21).

(2) On the issue of total failure of consideration, the provisions of cl 10 of the agreement provided that in consideration of the term loan and the sum of RM480,000 given by the plaintiff to the first defendant, the first defendant agrees to assign all rights and interests in the units to the plaintiff and the plaintiff agrees to reassign the units to the defendant after the defendant pays in full the term loan. Therefore, the plaintiff's contention that the consideration of the agreement is not the physical units but the defendant's agreement to repay the loan is incorrect. The main purpose of the agreement is obviously to finance the purchase of the units by the defendants. The consideration for the agreement is therefore the assigned units. Since the assigned units are no longer in the plaintiff's possession because of the sale of the units to a third party and the court order in S3–24–3280 of 2002 refusing to declare the plaintiff as lawful assignee of the units, there is clearly a total failure of consideration (see para 22).

(3) As for the first defendant's counterclaim, the first defendant had paid a total RM220,892.53 for the purchase of the units, including RM43,722.53. Just as the plaintiff had claimed that it had released a major portion of the loan, the first defendant had similarly made substantial repayment to the plaintiff. It would therefore not be fair to claim that the plaintiff's right to full repayment remains intact whilst there is no possibility of releasing the units to the defendant. The provisions of s 66 of the Contracts Act are applicable here (see para 25).

[Bahasa Malaysia summary

Plaintif memberikan defendan pertama satu pinjaman terma sebanyak RM480,000 untuk pembelian dua unit kondominium dan mereka juga telah memasuki satu perjanjian pinjaman serta serahhak yang bertarikh 11 Mac 1997. Satu surat kuasa wakil disempurnakan untuk membolehkan plaintif pada kemudiannya memberikan unit-unit tersebut kepada defendan pertama. Berikutan perjanjian tersebut, defendan kedua dan ketiga menyempurnakan satu surat jaminan. Plaintif mengatakan bahawa defendan-defendan telah gagal memenuhi obligasi mereka di bawah perjanjian dan jaminan tersebut dan menuntut jumlah RM340,516.51. Defendan-defendan menyatakan bahawa telah berlakunya kegagalan balasan. Perkara pokok perjanjian tersebut, iaitu unit kondominium No 1-5A telahpun dijual kepada pihak ketiga. Defendan-defendan menyatakan bahawa penjualan unit tersebut kepada pihak ketiga melepaskan mereka daripada sebarang obligasi di bawah perjanjian tersebut. Defendan menuntut balas. Peguamcara plaintif yang bijaksana memberitahu mahkamah bahawa ia telah memfailkan satu saman pemula No S3–24–3280 tahun 2002 untuk satu deklarasi bahawa plaintif adalah pemegang serahhak yang sah unit yang telah dijual kepada pihak ketiga oleh pemaju, akan tetapi saman pemula tersebut ditolak dengan kos. Soalan-soalan untuk ditentukan yang dikemukakan oleh

pihak-pihak kepada mahkamah ialah: (i) samada perjanjian serahhak dan perjanjian terma bertarikh 11 Mac 1997 telah dikecewakan; (ii) samada telah berlakunya kegagalan balasan berhubung dengan pinjaman tersebut; (iii) samada plaintif berkeupayaan menunaikan obligasinya mengembalikan unit-unit tersebut kepada defendan pertama di bawah perjanjian tersebut sekiranya defendan pertama menunaikan obligasinya di bawah kl 50 perjanjian terebut.

Diputuskan,

(1) Adalah jelas bahawa perjanjian serahhak dan perjanjian terma bertarikh 11 Mac 1997 telah dikecewakan. Klausa 50 perjanjian tersebut menyatakan bahawa defendan-defendan berhak mendapatkan satu pelepasan dan membatalkan gadaian hartanah tersebut selepas bayaran balik penuh pinjaman kepada plaintif. Ini menunjukkan bahawa apa yang dikehendaki oleh plaintif selepas pinjaman itu dibayar sepenuhnya ialah melepaskan dan membatalkan gadaian ke atas hartanah tersebut kepada defendan-defendan. Ini adalah obligasi plaintiff. Adalah jelas bahawa akhirnya plaintif tidak akan dapat menunaikan obligasinya di bawah klausa 50 perjanjian tersebut. Efek kesemua ini ialah keseluruhan kontrak dikecewakan oleh kerana satu terma asasi kontrak itu untuk plaintif menyerahhak kembali kondominium adalah mustahil walaupun jumlah sepenuhnya telah dibayar. Dengan itu perjanjian pinjaman serta serahhak bertarikh 11 Mac 1997 dikecewakan dan terbatal di bawah s 57(2) Akta Kontrak 1950 (lihat perenggan 19–21).

(2) Berhubung dengan isu kegagalan balasan, peruntukan-peruntukan kl 10 perjanjian tersebut memperuntukkan bahawa balasan terma pinjaman dan jumlah RM480,000 yang diberikan oleh plaintif kepada defendan pertama, defendan pertama bersetuju menyerahkan segala hak-hak dan kepentingan di unit-unit tersebut kepada plaintif dan plaintif bersetuju menyerahhak kembali unit-unit kepada defendan selepas pembayaran sepenuhnya oleh defendan pinjaman terma tersebut. Dengan itu, pengataan plaintif bahawa balasan perjanjian itu bukannya unit-unit tersebut secara fizikal tetapi bahawa perjanjian defendan membayar semula pinjaman adalah tidak tepat. Tujuan utama perjanjian tersebut adalah jelas untuk membiayai pembelian unit-unit tersebut oleh defendan-defendan. Balasan perjanjian tersebut dengan itu adalah serahan hak unit-unit tersebut. Oleh kerana serahan hak unit-unit tersebut tidak lagi menjadi milikan plaintif oleh kerana unit-unit tersebut telah dijual kepada pihak ketiga dan perintah mahkamah di S3–24–3280 tahun 2002 menolak permohonan plaintif untuk diisytiharkan sebagai pemegang serahhak yang sah, jelas terdapat kegagalan balasan (lihat perenggan 22).

(3) Berhubung dengan tuntutan balas defendan pertama, defendan pertama telah membayar jumlah sebanyak RM220,892.53 untuk pembelian unit-unit tersebut, termasuk RM43,722.53. Sepertimana plaintif menyatakan bahawa ia telah melepaskan sebahagian besar pinjaman tersebut, defendan pertama juga telah membayar sebahagian besar wang kepada plaintif. Dengan itu ia adalah tidak adil untuk menyatakan bahawa hak plaintif untuk menuntut pembayaran balik sepenuhnya tidak ubah manakala tiada kemungkinan

melepaskan unit-unit tersebut kepada defendan. Peruntukan s 66 Akta Kontrak terpakai di sini (lihat perenggan 25).]

Notes

For cases on impossibility of performance of agreement due to supervening act, see 3(2) *Mallal's Digest* (4th Ed, 2003 Reissue). paras 3309–3315.

Cases referred to

Delta Enterprise Sdn Bhd & Ors v Asia Commercial Finance (M) Bhd & Anor [2005] 1 CLJ 501 (refd)
Goh Yew Chye & Anor v Soh Kian Tee [1970] 1 MLJ 138 (refd)
Hipparion (M) Sdn Bhd v Chung Khiaw Bank Ltd [1998] 2 CLJ 101 (refd)
Hong Leong Leasing Sdn Bhd v Tan Kim Cheong [1993] 1 LNS 110 (refd)
Kredin Sdn Bhd v YTF Investments Sdn Bhd [1998] 1 MLJ 46 (refd)
Lian Keow Sdn Bhd & Anor v Overseas Credit Finance (M) Sdn Bhd & Ors [1998] 2 MLJ 449 (folld)
Public Finance Berhad v Ehwan bin Baring [1996] 1 CLJ 628 (folld)

Legislation referred to

Contracts Act 1956 ss 57(2), 66
Rules of High Court 1980 O 14A

Abdullah Omar (Hisham Sobri & Kadir) for the plaintif.
K Ramesh (Zachary Ivan Scully with him) (Chellam Wong & Co), Riza Makhzan (Sharifah & Associates) for the defendants.

Abdul Wahab Ahmad J:

[1] The plaintiff granted the first defendant a term loan of RM480,000 vide a letter of offer dated 20 January 1997 for the purchase of two condominium units in the housing development known as 'Gurney Heights' ('the Units'). The plaintiff and first defendant also entered into a loan agreement cum assignment on 11 March 1997 where the first defendant's full entire benefits of two sale and purchase agreements pertaining to the units were assigned to the plaintiff. A power of attorney was executed to enable the plaintiff to subsequently release the units to the first defendant. Following the agreement, the second and third defendants executed a letter of guarantee dated 11 March 1997. The plaintiff claimed that the defendants had failed to fulfill their obligations under the agreement and guarantee and claimed the amount of RM340,516.51

[2] On the date fixed for hearing, the first and second defendants' solicitors discharged themselves. The defendants duly engaged new solicitors. A day after the new solicitors took over, they applied to amend the defendants' defence. The amendment was sought because the defendants alleged that there was a total failure of consideration. The subject matter of the agreement, ie condominium unit No 1–5A ('the Unit') was sold to a third party. The defendants claimed that the sale of the unit to the third party had released them from any obligation whatsoever under the agreement. The defendant counterclaimed.

[3] The plaintiff's learned counsel informed the court that it had filed an originating summons No S3–24–3280–2002 for a declaration that the plaintiff is the rightful assignee of the unit that had been sold to the third party by the developer, however the originating summons was dismissed with costs.

[4] Having observed that there were no issues of facts, I directed the parties to consider determination of the suit under O 14A of the Rules of High Court 1980. Parties subsequently agreed and the questions for determination posed by parties to the court are the following:

(i) Whether the assignment agreement and term loan dated 11 March 1997 was frustrated;

(ii) Whether there is total failure of consideration where the loan is concerned;

(iii) Whether the plaintiff is capable of fulfilling its obligations of delivering back the said units to the first defendant under the agreement if the first defendant fulfilled its obligations under cl 50 of the agreement.

[5] On the first and second questions, the plaintiff's learned counsel submitted that the fact the unit had been sold to a third party does not in anyway frustrate the agreement. The agreement was said to have stood by itself and enforceable since the plaintiff is claiming in personam for breach of terms of the agreement by the second and third defendant. He further contended that the agreement is a loan agreement cum assignment and not a charge agreement. The subject matter that has become the consideration in the agreement is not the unit but the first defendant's agreement to repay the loan including interest that had been agreed to. The plaintiff had fulfilled its contractual obligations by releasing a major portion of the loan for the purpose of purchasing the units.

[6] The learned counsel next referred to cll 5, 6 and 11 of the agreement and said that the claim is for the defendant's breach in fulfilling its contractual obligations to repay the loan with interest. Clause 14(2) was said to have given the plaintiff the liberty to proceed against the first defendant in personam without having regard to what had happened to the property. The plaintiff said that the sale of the unit to a third party is a totally separate issue and should not be linked to the suit by the plaintiff to recover the loan repayment from the defendants.

[7] On the third question of whether the plaintiff is capable of fulfilling its obligations of delivering back the said units to the first defendant under the agreement if the first defendant fulfilled its obligations under cl 50 of the agreement, the plaintiff contended that it is misconceived, hypothetical and a mere speculation. This is because the defendants are far from having fulfilled their obligations under cl 5 and cl 6(a) and (b) of the agreement. It follows that the plaintiff is similarly not obliged at this stage to return the units to the defendants. The plaintiff's learned counsel reiterated that the agreement involves an assignment of rights and interests and not the physical delivery of the units to the plaintiff by the defendants. He referred to the case of *Kredin Sdn Bhd v YTF Investments Sdn Bhd* [1998] 1 MLJ 46 to prove this point.

[8] The plaintiff's learned counsel added that as the agreement is a loan agreement cum assignment, the rights that exist on the units are purely as a security because no individual strata title had been issued. Under the agreement, the first defendant as purchaser assigns to the plaintiff all his rights to the property as security for repayment of the loan in consideration of the plaintiff releasing the loan. He further said that only if the there had been an actual charge on the titles to the units before the plaintiff releases the loan in consideration of the first defendant charging the units to the plaintiff, then perhaps the plaintiff is under an obligation to return the charged property situation would arise. The plaintiff stressed that in bringing this action, it is merely exercising its contractual rights to obtain the contractual remedies under the agreement.

[9] Lastly, despite the fact that the plaintiff's originating summons for a declaration, that it is the legitimate assignee who was dismissed with costs, the first defendant is still contractually obliged to repay the loan and it does not exonerate the defendants from their contractual obligations. The plaintiff had released a substantial portion of the loan in financing the purchase of the units and the agreement was agreed to and signed by all the parties. The agreement is still valid, subsisting and enforceable against the first defendant. The dismissal of the originating summons was based on technical grounds, ie the plaintiff's failure to name some other parties in the application had not been decided on its merits. The plaintiff could still file afresh and name the necessary parties.

[10] The plaintiff's learned counsel referred to *Delta Enterprise Sdn Bhd & Ors v Asia Commercial Finance (M) Bhd & Anor* [2005] 1 CLJ 501 where the court held that the obligation to pay monthly interest is mandatory and failure to pay interest is a breach under the loan agreement allowing the plaintiff to exercise its rights under s 6.01 as an event of default under the agreement. In *Hipparion (M) Sdn Bhd v Chung Khiaw Bank Ltd* [1998] 2 CLJ 101, the Supreme Court upheld the High Court's decision and stated that with the existence of the assignment agreement, the conflicting parties are bound by their contractual obligations and the reliefs the plaintiff had asked for were allowed.

[11] In their submission in reply, the defendants' learned counsel referred to cl 50 of the agreement that reads:

> 50 RELEASE
>
> …. Upon repayment to the Bank of the loan together with all interest thereon and all other whatsoever monies payable by the Borrower under this Agreement, the Borrower shall be entitled at the Borrower's own cost and expense …. To obtain discharge and release of the said property from the bank …

[12] The defendants' learned counsel contended that the plaintiff is obliged to release the units after the first defendant had paid all the loan and interest in full. However, there is now a situation where the plaintiff is obliged to release the units after the first defendant had paid all the loan and interest in full. However, there is now a situation where the plaintiff would not be able to release the units to the first

defendant. The plaintiff would not anymore be in a position to fulfill its obligations under cl 50 of the agreement even if the first defendant had repaid the term loan in full.

[13] Therefore, the first defendant's learned counsel submitted, since the plaintiff would not be in position to release the units to the first defendant, the doctrine of frustration applies. Accordingly, the agreement becomes void under s 57(2) of the Contracts Act 1950.

[14] The first defendant claims that it had paid a total of RM220,892.53 for the purchase of the units. The amount consist of RM177,170.00 paid to the original developer of the project, Modular Resources Sdn Bhd. The first defendant said that it should be entitled to RM220,892.53 since the plaintiff would not be able to hand over the units to the first defendant. He referred to *Public Finance Berhad v Ehwan bin String* [1996] 1 CLJ 628 where it was held that if an agreement becomes void, as in this case, the plaintiff is obliged to return monies paid under s 66 of the Contracts Act 1950.

[15] On the issue of whether there is a total failure of consideration, the first defendant referred to cl 10 of the agreement. It says that in consideration of the term loan of RM480,000.00 given by the plaintiff to the first defendant, the first defendant agreed to assign all its rights and interests in the units to the defendant after the defendant paid in full the term loan. However, since the units that the plaintiff had assigned is no longer in the plaintiff's possession because of the court order in S3–24–3280–2002 and the sale of unit 1–5A to a third party, the consideration for the agreement had failed. He referred to *Goh Yew Chye & Anor v Soh Kian Tee* [1970] 1 MLJ 138 on total failure of consideration. To support his argument that the first defendant is entitled to repayment of the sum already paid to the plaintiff, he also referred to the case of *Hong Leong Leasing Sdn Bhd v Gan Kim Cheong* [1993] 1 LNS 110

[16] On the plaintiff's claim that in suing the defendants, it is exercising its right in personam the first defendant's learned counsel referred to the case of *Lian Keow Sdn Bhd A Anor v Overseas Credit Finance (M) Sdn Bhd & Ors* [1998] 2 MLJ 449, where it was held that the plaintiff could only exercise its right in personam if it had fulfilled its obligations under the agreement. However, since the plaintiff would not be able to deliver the units back to the first defendant, the right in personam is no longer available to the plaintiff.

[17] The first defendant's learned counsel disagreed with the plaintiff's that the subject matter of the agreement is not the physical units but the defendant's agreement to repay the loan. He submitted that the main purpose of the agreement is to enable the first defendant to finance the purchase of the units by the plaintiff. Therefore, the purchase of the units is not severable from the agreement. In amplification of his point he again referred to cl 10 of the agreement. It says that: 'In consideration of the bank having agreed to grant to the borrower the term loan, the borrower as beneficial owner hereby assigns unto the Bank absolutely all his rights, title and interest in and to the said property and the full and entire benefit of

the sale agreement together with all the rights, title and interest of the borrower therein …' He therefore concluded that the subject matter that has become the consideration for the Agreement is the said units.

[18] Having heard these submissions I answered all the three questions in the positive. I dismissed the plaintiff's claim and allowed the counterclaim both with costs to the defendants. I decided as such for the following reasons.

[19] It is clear that the assignment agreement and term loan dated 11 March 1997 were frustrated. The fact that the defendants could never get back the units that they have assigned to the plaintiff is the main cause. This state of affairs came about because the developer had sold off the units to a third party. The fact that the plaintiff's application in Civil Suit No S3–24–3280–2002 for a declaration that it is the rightful assignee of the property was dismissed had confirmed the fate of the units. They could never be handed over to the defendants. Even if the defendants had paid up the entire loan disbursed to them they will never be able to enjoy the units that they have paid for over the years.

[20] I find that the plaintiff's argument that the defendants would have to keep making payments to the plaintiff regardless of the fact they will never obtain the units is somewhat inconceivable. Equally so is the plaintiff's contention that the units are not the consideration for the agreement but the defendants' agreement to pay. I can see the answer all within the provisions of cl 50 of the agreement. The clause provides that the defendants shall be entitled to obtain a discharge and release of the said property upon full repayment of the loan to the plaintiff. This shows that what is required of the plaintiff after the loan is repaid in full is to release and discharge the property to the defendants. This is the plaintiff's obligation. It is obvious that at the end of the day, the plaintiff would not be able to fulfill that obligation under cl 50 of the agreement. The effect of all this is that the whole contract is frustrated as a fundamental term of the contract for the plaintiff to reassign the condominium has become impossible even if the full sum due is paid.

[21] In *Goh Yew Chew & Anor v Soh Kian Tee*, the court held that the sale by the developer of the units to the third party is a 'change of circumstances after the formation of the contract' and it is 'physically or commercially impossible to fulfill the contract' because the plaintiff would not be able to release the units to the defendants upon full repayment of the loan. I therefore hold that the loan agreement cum assignment and the term loan agreement dated 11 March 1997 are frustrated and becomes void under s 57(2) of the Contracts Act 1950.

[22] On the issue of total failure of consideration, I need look no further than the provisions of cl 10 of the agreement. It was provided that in consideration of the term loan and the sum of RM480,000.00 given by the plaintiff to the first defendant, the first defendant agrees to assign all rights and interests in the units to the plaintiff and the plaintiff agrees to reassign the units to the defendant after the defendant pays in full the term loan. Therefore, the plaintiff's is contention that the consideration of the agreement is not the physical units but the defendant's agreement to repay the loan is incorrect. The main purpose of the agreement is obviously to finance the

purchase of the units by the defendants. The consideration for the agreement is therefore the assigned units. Since the assigned units are no longer in the plaintiff's possession because of the sale of the units to a third party and the court order in S3–24–3280–2002 refusing to declare the plaintiff as lawful assignee of the units, there is clearly a total failure of consideration.

[23] On total failure of consideration, Visu Sinnadurai J in *Hong Leong Leasing Sdn Bhd v Tan Kim Cheong* said:

> Therefore, once there is total failure of consideration, the financier cannot claim any sum by way of instalments from the hirer. Furthermore, if the hirer had already paid certain sums by way of deposit or as instalments, the financier cannot retain such sum. However, where there has been a total failure of consideration, though the agreement is unenforceable, the parties may seek restitutionary remedies: See Goff and Jones The Law of Restitution (2nd Edition).

[24] I cannot agree with the plaintiff's argument that it is still entitled to claim for full repayment since it is exercising its rights in personam. Based on the authority of *Lian Keow Sdn Bad & Anor v Overseas Credit Finance (M) Sdn Bhd & Ors*, I hold that the right in personam is no longer available to the plaintiff since the plaintiff would not be able to release the units to the defendants and therefore failed to fulfill its obligations under the agreement. Having decided that the loan agreement cum assignment and the term loan is frustrated and that there is total failure of consideration, I dismissed the plaintiff's claim with costs against the first and second defendants.

[25] As for the first defendant's counterclaim, I considered the fact that the first defendant had paid a total RM220,892.53 for the purchase of the units, including RM43,722.53. Just as the plaintiff had claimed that it had released a major portion of the loan, the first defendant had similarly made substantial repayment to the plaintiff. It would therefore not be fair to claim that the plaintiff's right to full repayment remains intact whilst there is no possibility of releasing the units to the defendant. I find that the provisions of s 66 of the Contracts Act are applicable here. Following *Public Finance Berhad v Ehwan bin Saring*, I allowed a total of RM69,922.53 being RM43,722.53 that the first defendant had paid to the plaintiff and RM26,200 after deducting RM150,970 with interest at the rate of 8% from 29 September 2004 until full settlement and costs. As for the third defendant, I hold that he is entitled to costs since the declaration that he has sought for had been decided in this determination under O 14A of the Rules of the High Court 1980.

[26] As for the first defendant's counterclaim, I considered the fact that the first defendant had paid a total RM220,892.53 for the purchase of the units, including RM43,722.53. Just as the plaintiff had claimed that it had released a major portion of the loan, the first defendant had similarly made substantial repayment to the plaintiff. It would therefore not be fair to claim that the plaintiff's right to full repayment remains intact whilst there is no possibility of releasing the units to the defendant. I find that the provisions of s 66 of the Contracts Act are applicable here. Following *Public Finance Berhad v Ehwan bin Saring*, I allowed a total of RM69,922.53 being RM43,722.53 that the first defendant had paid to the plaintiff

and RM26,200 after deducting RM 150,970 with interest at the rate of 8% from 29 September 2004 until full settlement and costs. As for the third defendant, I hold that he is entitled to costs since the declaration that he had sought for had been decided in this determination under O 14A of the Rules of the High Court 1980.

Plaintiff's claim dismissed with costs against the first and second defendant.

Reported by Sally Kee